

STATE OF MICHIGAN
COURT OF APPEALS

LASHON D. HAGLER,

Plaintiff-Appellee,

V

CITY OF PONTIAC,

Defendant-Appellant,

and

ARON DEAN LEWIS,

Defendant.

UNPUBLISHED

December 15, 2011

No. 301028

Oakland Circuit Court

LC No. 2009-103745-NI

Before: O'CONNELL, P.J., and MURRAY and DONOFRIO, JJ.

PER CURIAM.

Defendant¹ appeals as of right the circuit court's order denying summary disposition in its favor based on governmental immunity under MCR 2.116(C)(7). Because the trial court properly determined, albeit on an incorrect basis, that a question of fact exists regarding the applicability of the motor vehicle exception to governmental immunity, MCL 691.1405, we affirm.

This case arises from an April 21, 2009, automobile accident involving plaintiff's vehicle and an emergency vehicle, or ambulance, driven by EMT Aron Lewis.² Lewis was dispatched regarding a domestic situation and was traveling southbound in a residential neighborhood. When he slowed the ambulance at an intersection, he saw plaintiff's vehicle traveling westbound on the cross street. Without coming to a complete stop, Lewis proceeded through the intersection, believing that there was sufficient distance between the two vehicles for plaintiff to stop before colliding with the ambulance. When the front of the ambulance was halfway through

¹ Because defendant Aron Dean Lewis is not a party to this appeal, our reference to "defendant" refers to defendant City of Pontiac only.

² Lewis testified that the vehicle is considered an ambulance.

the intersection, however, Lewis noticed that plaintiff was not attempting to stop. He then accelerated, hoping to quickly pass through the intersection and avoid a collision, but the front of plaintiff's vehicle struck the rear of the ambulance. According to plaintiff, she first saw the ambulance just after it entered the intersection. She attempted to stop but was unable to do so and slid into the rear of the ambulance.

Plaintiff filed a complaint against defendant and Lewis, and both defendants moved for summary disposition based on governmental immunity. The trial court granted summary disposition for Lewis, determining that plaintiff failed to present any evidence that he acted with gross negligence as required for liability under MCL 691.1407(2). With respect to defendant, the trial court denied summary disposition on two separate bases. The court rejected defendant's argument that the accident did not "result from" Lewis's conduct within the meaning of MCL 691.1405 because plaintiff's vehicle struck the ambulance rather than vice versa. The trial court also determined that there existed a question of fact regarding whether Lewis operated the ambulance negligently because plaintiff and Lewis offered contradictory testimony regarding whether the ambulance's siren was in use at the time of the accident. Defendant now appeals the trial court's decision.

We review de novo a trial court's decision on a motion for summary disposition. *Carr v City of Lansing*, 259 Mich App 376, 379; 674 NW2d 168 (2003). Summary disposition under MCR 2.116(C)(7) is properly granted when governmental immunity bars a claim. *Dextrom v Wexford Co*, 287 Mich App 406, 428; 789 NW2d 211 (2010). "When reviewing a motion under MCR 2.116(C)(7), this Court must accept all well-pleaded factual allegations as true and construe them in favor of the plaintiff, unless other evidence contradicts them." *Id.* If after reviewing the affidavits, depositions, and other documentary evidence, the facts are undisputed and reasonable minds could not differ regarding their legal effect, the determination whether a claim is barred is a question of law for the court. *Id.* at 429. Issues involving statutory interpretation are likewise questions of law that we review de novo. *Wesche v Mecosta Co Road Comm*, 480 Mich 75, 83; 746 NW2d 847 (2008).

Pursuant to the governmental tort liability act (GTLA), MCL 691.1401 *et seq.*, a governmental agency engaged in the discharge or exercise of a governmental function is immune from tort liability unless a statutory exception applies. MCL 691.1407(1); *Maskery v Bd of Regents of Univ of Michigan*, 468 Mich 609, 613; 664 NW2d 165 (2003). One such exception is the motor vehicle exception, MCL 691.1405, which provides, in relevant part:

Governmental agencies shall be liable for bodily injury and property damage *resulting from* the negligent operation by any officer, agent, or employee of the governmental agency, of a motor vehicle[.] [Emphasis added.]

Defendant argues that it was entitled to summary disposition because plaintiff's injuries did not "result from" the negligent operation of the ambulance within the meaning of MCL 691.1405. Specifically, defendant argues that the accident did not result from Lewis's alleged negligent operation of the ambulance because plaintiff's vehicle struck the ambulance, rather than vice versa, and Lewis did not act in a manner that physically forced plaintiff's vehicle into the ambulance.

Defendant's argument stems from an overly narrow reading of *Robinson v Detroit*, 462 Mich 439; 613 NW2d 307 (2000), and *Curtis v City of Flint*, 253 Mich App 555; 655 NW2d 791 (2002). In *Robinson*, 462 Mich at 456-457, our Supreme Court interpreted the phrase "resulting from" and determined that the plaintiffs could not satisfy the statutory language "where the pursuing police vehicle did not hit the fleeing car or otherwise physically force it off the road or into another vehicle or object." In *Curtis*, 253 Mich App at 562, this Court opined:

[T]he trial court correctly read *Robinson* to require that the emergency vehicle at issue here be physically involved in the collision that caused plaintiff's injuries, either by hitting plaintiff's vehicle or by physically forcing that vehicle off the road or into another vehicle or object.

Defendant's strained reading of *Robinson* and *Curtis* as requiring that a government vehicle hit the plaintiff's vehicle, rather than vice versa, overlooks the import of those decisions. In *Robinson*, the police vehicles did not come into contact with the vehicles being pursued. Rather, the passengers in the fleeing vehicles were killed or seriously injured when one vehicle crashed into a house and the other crashed into a nonpolice vehicle. *Robinson*, 462 Mich at 448-449. Similarly, the accident in *Curtis* occurred when the plaintiff driver struck a vehicle that had abruptly changed lanes to allow an emergency vehicle to proceed onto a road against a red traffic signal. *Curtis*, 253 Mich App at 557. In neither *Robinson* nor *Curtis* were the government vehicles physically involved in the collisions. Thus, defendant's reliance on those decisions as attaching any significance to which vehicle struck the other is misplaced. We note that defendant's argument is also at odds with the plain statutory language stating that government agencies are liable for injuries "resulting from" the negligent operation of a government vehicle. MCL 691.1405 makes no distinction between which vehicle strikes the other.

Further, defendant's position contravenes *Regan v Washtenaw Co Bd of Co Road Comm'rs*, 249 Mich App 153, 161-162; 641 NW2d 285 (2002), in which this Court held that the motor vehicle exception to governmental immunity applied where the plaintiff driver's vehicle struck a government vehicle driven by a road commission employee. There, the plaintiffs alleged that the plaintiff driver was driving her van near a five-vehicle convoy that was performing shoulder maintenance. When she attempted to pass one of the government vehicles that had extended into her lane, a cloud of dust blinded her view, and she collided with the government vehicle. *Id.* at 155-156, 161, 161 n 4. This Court held that the facts of the case "fit directly within the situations conceived of . . . in *Robinson*." *Id.* at 161. So too does the situation presented in this case where plaintiff's vehicle collided with the ambulance. Because defendant's argument that the accident did not "result from" Lewis's alleged negligence lacks merit, the trial court properly denied summary disposition on this basis.

Defendant next argues that the motor vehicle exception to governmental immunity is inapplicable because Lewis operated the ambulance in accordance with the standard of care governing the operation of emergency vehicles. As previously recognized, MCL 691.1405 provides an exception to governmental immunity only when injury or damage results from the "negligent operation" of the government vehicle. Thus, if the government agent or employee did not operate the vehicle in a negligent manner, the exception to immunity is inapplicable and the government agency is immune from liability. MCL 691.1405; see also *Tucker v Capital Area Transp Auth*, 486 Mich 974, 974-975; 782 NW2d 777 (2010) (CORRIGAN, J., dissenting).

We initially address plaintiff's argument that this Court lacks jurisdiction to decide this issue. MCR 7.203(A) grants this Court jurisdiction to decide an appeal of right from "[a] final judgment or final order of the circuit court . . . as defined in MCR 7.202(6)[.]" MCR 7.202(6)(a)(v) defines "final judgment" or "final order" to include "an order denying governmental immunity to a governmental party, including a governmental agency, official, or employee under MCR 2.116(C)(7)[.]" MCR 7.203(A) limits this Court's jurisdiction "to the portion of the order with respect to which there is an appeal of right." Plaintiff asserts that whether Lewis negligently operated the ambulance is an issue separate and distinct from governmental immunity, and, as such, this Court lacks jurisdiction to consider it.

This Court addressed this issue in *Newton v Michigan State Police*, 263 Mich App 251; 688 NW2d 94 (2004), overruled by *Watts v Nevils*, 477 Mich 856 (2006). In that case, a police trooper responding to a crime in progress collided with another vehicle, killing the driver. *Id.* at 252. The plaintiff, the driver's wife, filed an action against the trooper and the state police. *Id.* at 253. The trial court granted summary disposition in favor of the trooper based on the plaintiff's failure to establish a justiciable question of fact regarding whether the trooper acted with gross negligence to preclude the applicability of governmental immunity. *Id.* at 254-255. With respect to the state police, however, the court determined that a question of fact existed regarding whether the trooper acted negligently. The court clarified that its ruling was not based on a legal determination of whether governmental immunity barred the plaintiff's claim, but rather, on a determination that the evidence was sufficient to sustain a claim of negligence. *Id.* at 255-256. In holding that this Court lacked jurisdiction to decide the state police's appeal of right, this Court opined that the denial of summary disposition was based on the trial court's determination that the plaintiff presented a justiciable question of fact regarding negligence rather than on a determination regarding whether governmental immunity applied. *Id.* at 257-258. This Court continued:

Under [MCL 691.1405], a governmental agency, such as the Michigan State Police, is not entitled to governmental immunity if one of its employees causes bodily injury or property damage in the negligent operation of a motor vehicle owned by the agency. . . . [T]he key determination from defendant's standpoint was whether [the trooper] was negligent in the operation of the vehicle because a finding of negligent operation would trigger potential liability under MCL 691.1405. This is primarily a factual determination based on the pleadings and any documentary evidence submitted by the parties—in other words, a C(10)-type motion—and that is how it was treated by the trial court.

In our opinion, the trial court did not make a legal determination concerning whether defendant was entitled to claim governmental immunity. Instead, the trial court made a determination that there were genuine issues of material fact to be resolved by the trier of fact. [*Id.* at 258-259.]

This Court thus determined that it did not have jurisdiction over the state police's appeal of right because the order being appealed was not a final order denying governmental immunity. *Id.* at 259.

In *Watts v Nevils*, 477 Mich 856; 720 NW2d 755 (2006), our Supreme Court overruled the jurisdictional holding in *Newton*, citing favorably this Court’s decision in *Walsh v Taylor*, 263 Mich App 618; 689 NW2d 506 (2004), and deeming irrelevant the existence of factual issues. In *Walsh*, this Court stated:

The potential of immunity is at the core of virtually any case involving a governmental party. Thus, contrary to the reasoning in *Newton*, regardless of the specific basis of the trial court’s ruling on a motion for summary disposition, whenever the effect is to deny a defendant’s claim of immunity, the trial court’s decision is, in fact, “an order denying governmental immunity.” Logic dictates that such a determination be reviewable under MCR 7.203(A). MCR 7.202(6)(a)(v). When the trial court denied [the defendant police officer’s] motion in this case, the practical effect of the court’s ruling was to deny [his] claim of governmental immunity. [*Id.* at 624-625.]

Here, the trial court denied summary disposition for defendant based on its determination that there exists an issue of fact regarding whether Lewis operated the ambulance in accordance with the statutory standard of care. Because the effect of the trial court’s ruling was to deny defendant’s claim of governmental immunity, this Court has jurisdiction to decide this issue.³ *Watts*, 477 Mich at 856; *Walsh*, 263 Mich App at 625.

Turning to defendant’s substantive argument, defendant contends that the motor vehicle exception to governmental immunity is inapplicable because Lewis operated the ambulance within the standard of care governing the operation of emergency vehicles. Defendant relies on MCL 257.603, which provides, in relevant part:

(3) The driver of an authorized emergency vehicle may do any of the following:

* * *

(b) Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation.

(c) Exceed the prima facie speed limits so long as he or she does not endanger life or property.

* * *

³ The parties’ reliance on *Pierce v City of Lansing*, 265 Mich App 174, 182-183; 694 NW2d 65 (2005), is misplaced because, in that case, this Court decided as on leave granted, “in the interest of judicial economy,” an issue wholly unrelated to governmental immunity—whether the conditions that caused the plaintiff’s injury were open and obvious. Here, this Court has jurisdiction to decide the issue presented in an appeal of right because it is directly related to governmental immunity.

(4) The exemptions granted in this section to an authorized emergency vehicle apply only when the driver of the vehicle while in motion sounds an audible signal by bell, siren, air horn, or exhaust whistle *as may be reasonably necessary*, . . . and when the vehicle is equipped with at least 1 lighted lamp displaying a flashing, oscillating, or rotating red or blue light[.] [Emphasis added.]

Defendant also relies on MCL 257.706(d), which states:

An authorized emergency vehicle may be equipped with a siren, whistle, air horn, or bell capable of emitting sound audible under normal conditions from a distance of not less than 500 feet, but the siren shall not be used except when the vehicle is operated in response to an emergency call or in the immediate pursuit of an actual or suspected violator of the law. In those cases the driver of the vehicle shall sound the siren *when necessary to warn pedestrians and other drivers of the approach of the vehicle*. [Emphasis added.]

Here, Lewis testified that the ambulance's siren and lights were activated at the time that plaintiff's vehicle struck the ambulance. On the other hand, plaintiff maintained that the ambulance's lights were activated, but the siren was not. The trial court denied summary disposition for defendant, reasoning that, in light of plaintiff's testimony, there existed a question of fact regarding whether Lewis operated the ambulance using its siren and lights. Notwithstanding plaintiff's concession that the ambulance's lights were activated, and thus no question of fact regarding Lewis's use of the lights, the trial court erroneously opined that a question of fact regarding Lewis's use of the siren precluded a determination that he complied with the statutory standard of care. In so ruling, the trial court failed to adhere to the statutory language.

As set forth above, MCL 257.603 and MCL 257.706(d), when read together,⁴ require that an emergency vehicle's siren be activated only when reasonably necessary to warn others of the vehicle's approach. Thus, whether Lewis activated the siren, without more, is not dispositive of whether he operated the ambulance within the statutory standard of care. Rather, the issue is whether Lewis activated the siren *when its use was reasonably necessary* under the circumstances. The trial court failed to acknowledge this aspect of the statutory standard of care, which is a question of fact to be resolved by the jury. A rational jury could determine, based on plaintiff's version of events, that the circumstances warranted use of the siren because plaintiff did not see the ambulance until she was unable to stop and slid into it after "slamm[ing]" on her brakes. On the other hand, a reasonable jury could determine, based on Lewis's recollection of the accident, that activation of the siren was not necessary because plaintiff had ample time to stop but did not slow down at any point before striking the ambulance. Of course, the jury could also credit Lewis's assertion that the siren was in use at the time of the accident. Thus, although

⁴ Statutes that relate to the same subject matter and share a common purpose are *in pari materia* and must be read together. *Donkers v Kovach*, 277 Mich App 366, 370-371; 745 NW2d 154 (2007).

the trial court properly determined that there existed an issue of fact for trial, its determination was based on the erroneous notion that whether Lewis activated the siren was dispositive of whether he operated the ambulance within the statutory standard of care. This Court will not reverse when the trial court reaches the correct result, albeit for the wrong reason. *Coates v Bastian Bros, Inc*, 276 Mich App 498, 508-509; 741 NW2d 539 (2007).

Affirmed.

/s/ Peter D. O'Connell
/s/ Christopher M. Murray
/s/ Pat M. Donofrio